

**LETTER OPINION
2002-L-51**

September 24, 2002

Mr. Keith Kiser
Director, Motor Vehicle Division
Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700

Dear Mr. Kiser:

Thank you for your letter asking whether motor vehicle dealer licensing laws apply to motor vehicle leasing companies.

Motor vehicle dealers are required to be licensed under N.D.C.C. ch. 39-22. A “dealer” means “every person, partnership, corporation, or limited liability company engaged in the business of buying, selling, or exchanging motor vehicles, or who advertises, or who holds out to the public as engaged in the buying, selling, or exchanging of motor vehicles, or who engages in the buying of motor vehicles for resale.” N.D.C.C. § 39-01-01(11). Further, “[i]t is unlawful for any person to engage in the business of buying, selling, or exchanging of motor vehicles without possessing a current motor vehicle dealer license.” N.D.C.C. § 39-22-14. Also, no such person may “advertise or otherwise hold out to the public as engaging in the buying, selling, or exchanging of motor vehicles for resale” without an appropriate dealer’s license. Id.

The primary objective when construing statutes is to ascertain the Legislature’s intent, first by looking at the words used in the statute and giving them their plain, ordinary, and commonly understood meaning. Lawrence v. North Dakota Workers Compensation Bureau, 608 N.W.2d 254, 260 (N.D. 2000). Related statutes are construed as a whole to harmonize and give meaning to each word and phrase. Id. Interpretation of statutes must be reasonable and consistent with legislative intent and done in a manner which will accomplish the policy goals and objectives of the statute. Heartview Foundation v. Glaser, 361 N.W.2d 232, 235 (N.D. 1985). A narrow construction should not be permitted to undermine the public policy sought to be served by a statute. Matter of Estate of Thompson, 586 N.W.2d 847, 849 (N.D. 1998). Statutes are to be construed liberally in order to achieve their objectives but the terms of a statute cannot be extended unreasonably even under such a construction. Skoog v. City of Grand Forks, 301 N.W.2d

404, 407 (N.D. 1981). A statutory definition declaring what a term means excludes any meaning that is not stated as long as the prescribed meaning is not so discordant to common usage as to create confusion. Lapp v. Reeder Public School District No. 3, 491 N.W.2d 65, 70 (N.D. 1992).

The activities requiring a license under N.D.C.C. § 39-22-14 and the definition of “dealer” under N.D.C.C. § 39-01-01(11) both use the phrase “buying, selling, or exchanging” motor vehicles. The terms “buying” and “selling” both carry the connotation that an exchange of title ownership will take place. The use of the word “exchanging” will likewise require a similar exchange of title ownership under well-settled rules of statutory interpretation.¹

Further, the definition of a “dealer” under N.D.C.C. § 39-01-01(11) is closely related to the licensing requirements under N.D.C.C. § 39-22-14, and both must be construed together to reach an appropriate meaning. Under that definition, it is not only that the dealer is buying, selling, or exchanging motor vehicles, but also that the dealer is in the business of doing so, that the dealer advertises or represents to the public as doing so, or that the dealer is buying motor vehicles for the purpose of resale. Putting the definition of a “dealer” together with the requirements for dealer licensing demonstrates that the Legislature intended to address those businesses where the public is led to understand that they may buy or sell a motor vehicle.

In addition, in your letter you state it is the long-time position of the Department of Transportation that N.D.C.C. ch. 39-22 does not require leasing companies to obtain motor vehicle dealer’s licenses to conduct leasing transactions in this state. The construction of a statute by an administrative agency charged with its execution is entitled to weight, and courts will defer to the agency’s reasonable interpretation unless it contradicts clear and unambiguous statutory language. E.g., Frank v. Traynor, 600 N.W.2d 516, 520 (N.D. 1999). Based on the foregoing, it is my opinion that motor vehicle leasing businesses are not subject to licensure under N.D.C.C. ch. 39-22.

There are a couple of caveats. Leasing companies have been known to accept title to a customer’s vehicle as a courtesy to the customer when the customer is new to leasing. Repeat leasing customers probably would not own a vehicle to trade in. Extending this courtesy to the occasional customer who is new to leasing does not appear to be within the scope of activities that the Legislature intended to address by licensing motor vehicle

¹ “Under the rule of *ejusdem generis*, when general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects specifically enumerated.” Larsen v. Zarrett, 498 N.W.2d 191, 194 (N.D. 1993). Further, the North Dakota Supreme Court has adopted the doctrine of *noscitur a sociis*, which is a “canon of construction holding that the meaning of an unclear word or phrase should be determined by the words immediately surrounding it.” T. F. James Co. v. Vakoch, 628 N.W.2d 298, 302 (N.D. 2001).

dealers. However, if a leasing company went beyond the occasional purchase of a vehicle trade-in and held itself out to the public as a business engaged in the purchase of used motor vehicles, it runs the risk of becoming a used vehicle dealer and requiring licensure. To do so could be construed as engaging in "the business of buying [or] exchanging of motor vehicles" within the meaning of N.D.C.C. § 39-22-14.

Similarly, when a leasing business sells its inventory, it also runs the risk of becoming a used vehicle dealer and requiring licensure if it holds itself out to the public as a business engaged in the selling of used motor vehicles. In ridding itself of excess inventory, a leasing business must not operate a retail used motor vehicle lot unless it obtains a license to do so, N.D.C.C. § 39-22-14, nor operate as a wholesale or retail auto auction business without being licensed. See N.D.C.C. § 39-22-23.

Although businesses engaged in leasing motor vehicles to retail customers do not have to have a motor vehicle dealer license under N.D.C.C. ch. 39-22, this exception presents an important public policy consideration. State law requires that a new motor vehicle dealer have a contract or franchise in effect with the manufacturer or distributor of any new motor vehicles which the dealer proposes to sell. N.D.C.C. § 39-22-16. While the public is generally aware of the differences between purchasing and leasing a motor vehicle, many customers of leasing businesses do so as a substitute for purchasing a motor vehicle. While a leasing company holds the title to the motor vehicle, and therefore is not selling a new motor vehicle, the customer is still obtaining a motor vehicle which has not been previously driven. After your request for my opinion was received, several interested parties forwarded comments on this topic to my office. Many of the comments related to public policy issues which are best considered by the Department of Transportation and by the Legislative Assembly. I am enclosing copies of this correspondence for your consideration.

Sincerely,

Wayne Stenehjem
Attorney General

eee/vkk
Enclosures